

Privacy Commissioner's submission to the Justice Committee on the Arms Bill (233-1)

Introduction

1. I am pleased to provide a submission to the Justice Committee on the Arms Bill (the Bill).
2. The Privacy Act 2020 is New Zealand's main privacy statute. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals.
3. The Bill would repeal and replace the Arms Act 1983 to simplify and update the firearms regulatory system. Among other changes, the Bill:
 - a. establishes an autonomous agency under New Zealand Police to be the Arms Regulator
 - b. directs the Arms Regulator to administer and maintain the Arms Registry, which contains information about firearms licence holders
 - c. provides for information sharing between the Arms Regulator and Police
 - d. makes some substantive changes to the licensing regime, including automatically disqualifying persons who are deemed to be gang members from holding a firearms licence.

Status of the Arms Regulator under the Privacy Act

4. I understand one of the objectives of the Bill is to establish an Arms Regulator that operates independently of Police, separating out the firearms regulatory function from criminal enforcement to build trust between legitimate firearms owners and the regulator.



5. A key element of this trust is ensuring that the Arms Regulator protects and secures the personal information held in the Arms Registry (clause 347). The Arms Regulator's status under the Privacy Act needs to be clear to establish accountability for the personal information held, including to guard against events like data breaches or employee browsing.
6. I consider that the Arms Regulator, as created by clauses 300-312, is a public sector agency for the purposes of the Privacy Act, and therefore regulated by the Privacy Act separately from Police. While the Arms Regulator and Police are to share corporate services as provided for in clause 310, this does not preclude the Arms Regulator from meeting its obligation to appoint a privacy officer and to comply with other obligations under the Privacy Act.
7. This means that the Arms Regulator must comply with the Privacy Act's Information Privacy Principles in regard to the personal information it collects, holds and shares. For example, Information Privacy Principle 5 sets out a legal requirement to take all reasonable steps to keep information on the Arms Registry secure. That includes steps to put in place technical IT and cyber security controls, a vital part of today's digital environment.
8. If the Arms Regulator is not intended to be a separate agency from Police for Privacy Act purposes, I recommend this is made clear in the drafting.

Disqualification of gang members from holding a firearms licence

9. In clause 68, the Bill provides that a person is automatically disqualified from holding a firearms licence if they are a gang member. This is an additional ground to those currently specified in the Arms Act.
10. While I do not seek to comment on the ground for disqualification itself, I have concerns about the operationalisation of this policy, which may lead to reliance



on inaccurate or outdated information when assessing whether someone is a gang member.

11. 'Gang member' is defined by reference to the Gangs Act 2024, which lists identified gangs that operate in New Zealand. In practice, determining whether a person is a gang member or not is likely to rely on the National Gang List (NGL). The NGL is an intelligence tool maintained by Police and used to help identify gang members. It has known accuracy and bias issues, including that inactive gang members may not be removed from the NGL.
12. The impacts of relying on inaccurate information may fall disproportionately on vulnerable populations, particularly people from low socioeconomic status backgrounds and Māori, given these groups are likely to be overrepresented on the NGL.
13. In my view, the NGL should not be relied upon as the authoritative source of information about whether someone is a gang member. I note that gang membership or affiliation is also a consideration in provisions of the Bill dealing with the 'fit and proper person' test and firearms prohibition orders (clauses 69, 123, 288-289).

Conclusion

14. I trust my comments are of use to the Committee. I do not seek to be heard on my submission but am happy to appear before the Committee if that would be of assistance.



Michael Webster

Privacy Commissioner

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